## APPENDIX A

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

**Consolidated Docket No. 99-35320**
**(Docket Nos. 99-35320, 99-35325, 99-35327, 99-35331, 99-35333, 99-35405)**

**[Dated July 18, 2002]**

PLANNED PARENTHOOD OF THE COLUMBIA/ WILLAMETTE, Inc., et al.,
Plaintiffs-Appellees,

v.

AMERICAN COALITION OF LIFE ACTIVISTS, et al.,
Defendants-Appellants.

On Appeal From
United States District Court, District of Oregon
Honorable Robert E. Jones
Docket No. 95-1671-REJ

**PLAINTIFFS-APPELLEES' OPPOSITION TO DEFENDANTS-APPELLANTS' JOINT MOTION TO STAY THE MANDATE**

* * *

## 1. The Supreme Court Is Not "Likely" To Grant Certiorari in This Case

Defendants-Appellants' assertion that the Supreme Court is "likely" to grant certiorari is both presumptuous and meritless. Indeed, the Supreme Court is *unlikely* to grant certiorari at this time – irrespective of the substantive merits of the issues raised in a petition – precisely because there is no final judgment in this case.

* * *

In its May 16, 2002 *en banc* Opinion in this case, this Court remanded the case to the District Court to consider the constitutionality of the punitive damages award. As a result, there is no final judgment in this case. The Supreme Court has a long-standing policy against granting review until the courts below have rendered a final judgment.

* * *

The Supreme Court's practice of denying certiorari of non-final judgments is not a new development. The Supreme Court may deny certiorari at this time and, after the District Court and this Court decide the outstanding punitive damages question, Defendants-Appellants might seek Supreme Court review again. Thus, if this Court were to stay issuance of the mandate pending resolution of Defendants-Appellants' upcoming petition, and the Supreme Court were to deny certiorari; Defendants-Appellants would have guaranteed themselves a lengthy period of time between their two anticipated cert petitions (whatever

the merits of any such petition). In other words, given the remand ordered by this Court, Defendants-Appellants' petition at this juncture will, in fact, delay the final resolution of the case, which compels this Court to deny the requested stay.

* * *

Dated: July 18, 2002

Respectfully submitted,

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON

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## APPENDIX B

**In the**
**Supreme Court of the United States**

**No. 02-563**

**[Dated November 12, 2002]**

| | |
|---|---|
| AMERICAN COALITION OF LIFE ACTIVISTS, ET AL., Petitioners, | ) |
| v. | ) |
| PLANNED PARENTHOOD OF THE COLUMBIA/WILLAMETTE, INC., ET AL., Respondents. | ) |

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF IN OPPOSITION**

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November 12, 2002

* * *

ACLA appealed. In an opinion by Judge Kozinski, a three-judge panel reversed, ruling that ACLA must threaten that it or its agents personally will commit the threatened violence.[9] The Ninth Circuit reheard the case *en banc*. In an opinion authored by Judge Rymer, joined by Chief Judge Schroeder and Judge

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[9] *See* note 33, *infra*.

Hawkins, Silverman, Wardlaw and Rawlinson, the *en banc* majority found that petitioners, with intention to intimidate, threatened violence, and affirmed the liability verdict and injunction, and remanded to the District Court for further proceedings on the amount of the punitive damages award.[10]

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[10] Those proceedings have not occurred and, thus, there is no final judgment in this case. *See Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, 68 (1948) (holding that a judgment is not final "where liability has been determined and all that needs to be adjudicated is the amount of damages"). "[E]xcept in extraordinary cases, the writ is not issued until final decree." *Hamilton-Brown She Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916). *See also Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R. Co.*, 389 U.S. 327, 328 (1967).